

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH MITCHELL,

No. C 07-4619 SI (pr)

Petitioner,

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

v.


U. S. ATTORNEY GENERAL
ALBERTO GONZALES,

Respondent.

Petitioner's application for a certificate of appealability is DENIED as unnecessary. (Docket # 5.) A certificate of appealability is not necessary because his habeas petition challenges the inaction of the immigration authority and does not challenge the legality of his state court conviction or sentence. The detention complained of (or the failure to detain by the immigration authority) does not arise out of process issued by a state court. See 28 U.S.C. § 2253(c)(1)(A); cf. White v. Lambert, 370 F.3d 1002, 1004 (9th Cir. 2004) (no certificate required for appeal from denial of § 2241 petition challenging transfer from a state prison to a private prison in another state); Rosas v. Nielsen, 428 F.3d 1229, 1232 (9th Cir. 2005) (no certificate required for appeal from denial of petition challenging administrative decision by parole board to deny parole); Forde v. U.S. Parole Comm'n, 114 F.3d 878, 879 (9th Cir. 1997) (no certificate required for appeal from denial of § 2241 petition challenging execution of federal sentence). The clerk shall process the appeal.

IT IS SO ORDERED.

DATED: October 29, 2007



SUSAN ILLSTON
United States District Judge